



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No. 140613502-4502-01

RIN 0691-XC026

Direct Investment Surveys: BE-10, Benchmark Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to reinstate reporting requirements for the 2014 BE-10, Benchmark Survey of U.S. Direct Investment Abroad. Benchmark surveys are conducted every five years; the prior survey covered 2009. The benchmark survey covers the universe of U.S. direct investment abroad, and is BEA's most comprehensive survey of such investment in terms of subject matter. For the 2014 benchmark survey, BEA proposes changes in the data items collected. No changes are proposed to the reporting requirements for the survey. This mandatory survey would be conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike most other BEA surveys conducted pursuant to the Act, a response would be required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, whether or not they are contacted by BEA, in order to insure that respondents subject to the requirements for U.S. direct investment abroad are identified.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on

or before 5:00 p.m. [insert date 60 days after publication IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 0691-XC026, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. For Keyword or ID, enter “EAB-2014-0002.”
- *E-mail:* Barbara.Hubbard@bea.gov.
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606-2894.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Shipping and Receiving, Section M100, 1441 L Street NW, Washington, DC 20005.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608-0049, Attention PRA Desk Officer for BEA, via e-mail at pbugg@omb.eop.gov, or by FAX at 202-395-7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected

information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Barbara K. Hubbard, Acting Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9846.

SUPPLEMENTARY INFORMATION: The BE-10, Benchmark Survey of U.S. Direct Investment Abroad, is a mandatory survey and is conducted once every five years by BEA under the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108 (the Act). Section 3103(b) of the Act provides that “with respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter.” In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA.

Section 3103(b) also instructs BEA to:

- (1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;
- (2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each

country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

- (3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;
- (4) Obtain information on tax payments by parents and affiliates by country; and
- (5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

By rule issued in 2012 (77 FR 24373), BEA established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. This proposed rule would amend the regulations to require a response from persons subject to the reporting requirements of the BE-10, whether or not they are contacted by BEA, in order to ensure complete coverage of U.S. direct investment abroad.

The benchmark survey covers the U.S. direct investment abroad universe and is BEA's most comprehensive survey of such investment in terms of subject matter. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data are needed to measure the size and economic significance

of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in non-benchmark years. In particular, they would serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the operations of U.S. parent companies and their foreign affiliates.

This proposed rule would amend 15 CFR 801 by adding a new section 801.8 to set forth the reporting requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (PRA).

Description of Changes

The proposed changes would amend the regulations and the survey forms for the BE-10 benchmark survey. These amendments include changes in the data items collected and questionnaire design.

If this proposed rule is made final, unlike most other BEA surveys conducted pursuant to the Act, persons subject to the reporting requirements of the BE-10, Survey of U.S. Direct Investment Abroad, would be required to respond whether or not they are contacted by BEA.

BEA proposes to add and delete some items on the benchmark survey forms. Most of the additions are proposed in response to suggestions from data users. The following items would be added to the benchmark survey:

- (1) For U.S. parent companies, questions will be added to collect data on the U.S. imports of goods by the intended use of the goods and by whether the shipper of the goods is a foreign affiliate or an unaffiliated foreign entity.
- (2) For larger U.S. parent companies (those with assets, sales, or net income greater than \$300 million), questions will be added to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities. These questions are collected on the Annual Survey of U.S. Direct Investment Abroad (BE-11).
- (3) A question will be added to identify the city in which each foreign affiliate is located.
- (4) For majority-owned foreign affiliates with assets, sales, or net income greater than \$80 million, a question will be added to the balance sheet to collect data on cash and cash equivalents.
- (5) For larger majority-owned foreign affiliates (those with assets, sales, or net income greater than \$300 million), questions will be added to the section to collect sales data on the top five countries (besides the U.S. and the country of the affiliate) to which the affiliates made sales. For each country, sales will be categorized by customer: “other foreign affiliates of the U.S. Reporter(s)” and “unaffiliated customers.” An “all other” item will also be added after the top five countries. Questions on sales by region of destination will be retained.
- (6) For majority-owned foreign affiliates with assets, sales, or net income greater than \$80 million, questions will be added to the section on royalties and license fees to collect receipts from U.S. parents, receipts from other U.S. persons, payments to U.S. parents, and payments to other U.S. persons. On the previous benchmark survey, this section only included receipts from and payments to foreign persons.

(7) For foreign affiliates with assets, sales, or net income greater than \$25 million, several check-box questions will be added to ensure that certain types of finance companies do not report intercompany debt to BEA that is already reported on Treasury International Capital surveys. Similar questions are included in the Quarterly Survey of U.S. Direct Investment Abroad (BE-577).

(8) For foreign affiliates with assets, sales, or net income between \$25 million and \$80 million, a question will be added to collect expenditures for research and development performed by the foreign affiliate.

Several questions will be modified:

(1) Questions on contract manufacturing will be updated to incorporate improved wording.

(2) The cash item on the balance sheet for U.S. parent companies will be modified to include cash equivalents.

BEA proposes to eliminate the following items from the benchmark survey because they are no longer used:

(1) Official foreign identification numbers issued by host-country governments to foreign affiliates on BE-10B.

(2) Withholding taxes on interest received from and paid to U.S. parent companies by foreign affiliates on BE-10B.

In addition, BEA plans to redesign the survey questionnaires. The new design will incorporate improvements made to other BEA surveys. Survey instructions and data item descriptions will be changed to improve clarity and make the benchmark survey forms more consistent with those of other BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608-0049.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-10 survey, as proposed, is expected to result in the filing of reports from approximately 3,900 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 144 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 561,100 hours, compared to 459,400 hours for the previous (2009) benchmark survey. The increase in burden hours is due to an increase in the size of the respondent universe.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE-10 report is required of any U.S. company that had a foreign affiliate — that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch — at any time during the U.S. company's 2014 fiscal year. U.S. companies that have direct investments abroad tend to be quite large, and few small U.S. businesses are subject to the reporting requirements of this survey. Also, U.S. businesses that meet the SBA small business standards tend to have few foreign affiliates and the foreign affiliates that they do own are small. BEA estimates that approximately 800 of the approximately 3,900 U.S. parent companies that will be required to respond to the BE-10 benchmark survey are small businesses according to the standards established by the SBA. The number of items required to be reported for a foreign affiliate is determined by the size of the affiliate's assets, sales, and net income. In the BE-10 survey, for the smallest foreign affiliates — those with total assets, sales or gross operating revenues, and net income of less than or equal

to \$25 million (positive or negative) — only a few selected items would be reported on a schedule-type form, Form BE-10D. To further ease the reporting burden on smaller U.S. companies, U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to \$300 million (positive or negative) are required to report only selected items on the BE-10A form for U.S. Reporters, in addition to forms they may be required to file for their foreign affiliates. Further, public reporting burden for the BE-10 collection of information is estimated to vary from 14 hours for the smallest and least complex U.S. Reporter with only one foreign affiliate, to approximately 18,000 hours for a very large U.S. Reporter with up to 800 affiliates with a wide range of activities. We estimate that most small reporters that will be subject to this rule will cluster around the 14 hour reporting burden.

Because a very small percentage of the over 5 million U.S. small businesses are impacted by this rule (.016 percent or less than $2/100^{\text{th}}$ of 1 percent of all small businesses), and because those small businesses that will be impacted will be subject to only minimal reporting burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, International transactions, Multinational companies, Penalties, Reporting and record keeping requirements, U.S. direct investment abroad.

Dated: July 30, 2014

Brian C. Moyer,

Acting Director, Bureau of Economic Analysis.

BILLING CODE 3510-06-P

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7 and 801.8, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

3. Add § 801.8 to read as follows:

§801.8 Rules and regulations for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2014.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2014. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2014, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant this section. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the “BE-10 Claim for Not Filing” by the due date of the survey; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A and Form(s) BE-10B, BE-10C, and/or BE-10D) by May 29, 2015, or June 30, 2015, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at any time during the U.S. person's 2014 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2014 fiscal year, a “BE-10 Claim for Not Filing” must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2014 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 2014 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE-10 survey, a “majority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as “minority-owned” affiliates.

(c) *Forms to be filed.* (1) Form BE-10A must be completed by a U.S. Reporter. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise. It must also file Form(s) BE-10B, C, and/or D for its foreign affiliates, whether held directly or indirectly.

(2) Form BE-10B must be filed for each majority-owned foreign affiliate for which any of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$80 million (positive or negative) at any time during the affiliate's 2014 fiscal year.

(3) Form BE-10C must be filed:

(i) For each majority-owned foreign affiliate for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million but for which none of these

items was greater than \$80 million (positive or negative), at any time during the affiliate's 2014 fiscal year, and

(ii) For each minority-owned foreign affiliate for which any one of the three items listed in (c)(2) of this section was greater than \$25 million (positive or negative), at any time during the affiliate's 2014 fiscal year.

(4) Form BE-10D must be filed for majority- or minority-owned foreign affiliates for which none of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at any time during the affiliate's 2014 fiscal year. Form BE-10D is a schedule; a U.S. Reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(d) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, C, and/or D (as required) is due to be filed with BEA not later than May 29, 2015, for those U.S. Reporters filing fewer than 50, and June 30, 2015, for those U.S. Reporters filing 50 or more, foreign affiliate Forms BE-10B, C, and/or D. If the U.S. person had no foreign affiliates during its 2014 fiscal year, it must file a BE-10 Claim for Not Filing by May 29, 2015.